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Subject: Comments of Members of MI Judicial Selection Task Force on Report of Task Force Role of the State Bar of MI (*revised to add Judge Whitbeck's name*)

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COMMENTS OF MEMBERS OF THE MICHIGAN JUDICIAL SELECTION TASK FORCE ON THE REPORT OF THE TASK FORCE ON THE ROLE OF THE STATE BAR OF MICHIGAN

We appreciate the opportunity to respond to the recommendations of the Task Force on the Role of the State Bar of Michigan. Our response is keyed to the research and findings of the Michigan Judicial Selection Task Force on which many of us served.

**JUDICIAL SELECTION AND FINANCING TRANSPARENCY
ARE APPROPRIATE SUBJECTS FOR THE SBM**

We feel strongly that the Task Force is sadly mistaken in recommending that the State Bar of Michigan be prevented from opining publicly on the subject of judicial selection. Judicial selection and the included subject of transparency in the financing of elections are more than merely appropriate for consideration by the State Bar of Michigan. They go to the core of the SBM's mission of improving the administration of justice. They are matters in which the SBM is uniquely interested and on which it is particularly qualified to opine given the nature, expertise and experience of its constituency.

***KELLER* SHOULD NOT BE EXPANDED**

Moreover, it is legally permissible under the *Keller* decision for the SBM to opine to the public and to the legislature on the subject of judicial selection. *Keller* has never been interpreted to prevent this, and the Court should not expand *Keller* to prevent it in the future. We see no good reason why the Court should adopt the recommendation of the Task Force to give *Keller* an ultra-strict interpretation in Michigan, causing Michigan to be among the most rigid in its reading of this case. As the Task Force on the Role of the SBM acknowledges, Michigan's current *Keller* boundaries and procedures are similar to those established in most other mandatory bar states. The recommendation to reinterpret *Keller* pushes the Court to chase down a problem that does not exist. What better proof of this is there than the small number (2) of complaints about the SBM's compliance with *Keller* since that decision was handed down?

JUDICIAL SELECTION, ELECTION LAW AND BALLOT ISSUES MUST NOT BE SINGLED OUT AS INHERENTLY *KELLER *IMPERMISSIBLE

The Court should treat judicial selection, election law and ballot issues like other issues. Consequently, the Court should not follow the Task Force's recommendation to designate them as inherently "impermissible" areas. They deserve the same *Keller* analysis as any other matters. The Task Force offers no reasons to exempt them from *Keller* analysis and treat them as inherently impermissible for the simple reason that no good reasons exist.

ADDITIONAL LEVELS OF *KELLER *REVIEW EXTENDING OUTSIDE THE SBM ARE UNNEEDED

Current SBM structures provide multiple levels of review that adequately apply the *Keller* guidelines to issues such as judicial selection and campaign financing rendering additional *Keller* review by an outside body both unneeded and superfluous. The Task Force's recommendation for such a requirement is misguided and would serve no useful purpose. Instead, it would hobble the SBM in formulating and advancing its position to the public and to the Legislature. Given the unusual ability of the SBM to bring together individuals with unique expertise and experience on the subjects of judicial selection and transparency in the financing of elections, the MSC should explicitly reject any additional *Keller* review that would tend to gag the SBM on these subjects.

We trust these comments will be helpful to the Court. We would be pleased to provide any additional comments as the Court might request.

Signed:

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